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# **Paramountcy, family rights and contested adoption: does contact with birth relatives balance the scales?**

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This paper combines practitioner insight and research evidence to chart how principles of partnership and paramountcy led to birth family contact becoming the expected norm following contested adoption from care in Northern Ireland. It highlights how practice has adapted to the delay in proposed reforms to adoption legislation, resulting in the evolution of increasingly open adoption practices. Adoption represents an irrevocable transfer of parental responsibility from birth to adoptive parents and achieves permanence and legal security for children in care who cannot return to birth family. Its enduring effect, however, makes public adoption a contentious field of child welfare practice, particularly when contested by birth parents. This paper explores how post-adoption contact may be viewed as reconciling the uneasy interface between paramountcy principles and parental rights to respect for family life. It highlights the complexity of adoptive kinship relationships following contested adoption from care, and how contact presents unique challenges that mitigate against meaningful and sustainable connections between the child and their birth relatives. In conclusion, a call is made for sensitive negotiation and support of contact arrangements, and the development of practice models that are informed by an understanding of the workings of adoptive kinship.

## **Introduction**

Since the implementation of the Children (Northern Ireland) Order 1995 Northern Ireland has seen an increased use of adoption to provide continuity, stability and enduring relationships to children in State care who cannot return home to their birth family (Kelly and McSherry, 2002). As is the case across the UK and in the US, many of these adoptions are contested by birth parents and made via legislation, e.g. Freeing Orders in Northern Ireland, which dispenses with the need for parental consent (Tefre, 2015; Kelly and McSherry, 2002). Non-consensual adoption from care, however, is a contested area of child-welfare practice because of its life-long implications for birth parent and child, and the necessity and proportionality of the rights infringements it entails are strongly debated (Bywaters, 2015).

A foundational principle of the Children Order is that the welfare of the child shall be the court's paramount consideration in any question regarding their upbringing (Art. 3). Concomitant with this paramountcy principle is an imperative 'to ensure that children have a secure, stable and loving family to support them through childhood and beyond' (DfE, 2015b, p.6), placing an emphasis on permanence planning for all children involved in child welfare services. While adoption delivers good

1 outcomes for children in care, upholding the paramountcy of their welfare, it does not sit easily with  
2 the principles of partnership and family preservation which are equally foundational to the Children  
3 Order.

4 This paper examines how practice in Northern Ireland has adapted to the delay in proposed reforms  
5 intended to align adoption legislation more closely to the principles of the Children Order. In  
6 particular, it charts how partnership working and efforts to prevent family separation have led to  
7 increasingly open practices whereby most adopted children in Northern Ireland will now have some  
8 form of contact with birth relatives after adoption. The paper questions whether post-adoption  
9 contact does indeed, as it is sometimes viewed as doing, reconcile the uneasy interface between  
10 paramountcy principles and parental rights to respect for family life.

11 This discussion is informed by systematic narrative reviews of policy and research in relation to post-  
12 adoption contact undertaken as part of two research projects exploring the separate perspectives of  
13 adoptive parents (MacDonald, 2015; 2016) and birth parents (McLoughlin, 2013). It also draws on  
14 the practice experience of both authors who have worked as social workers in the field of adoption  
15 and permanence planning for looked after children.

#### 16 **Adoption as a permanence option for Looked After children**

17 The Children Order reflects important guiding principles of the UNCRC which specifies that children  
18 have a right to be cared for by their parents unless this would be significantly harmful to them  
19 (Article 7), in which case they have a right to benefit from continuity of alternative care (Article 20),  
20 and to know their parents even if living separately from them (Article 7). These principles are  
21 enacted in child welfare policy, the primary focus of which is on enabling children to be cared for by  
22 their birth families, with services targeted at family preservation to prevent children coming into  
23 care, and to facilitate re-unification when they do. This is echoed in the rhetoric of care planning and  
24 permanence which presents a hierarchy of placement options that prefers children to grow up with  
25 their birth parents when possible, or with extended kin as the next best choice.

26 When family preservation is not achievable, however, a core objective of child welfare policy,  
27 reflecting the imperative of paramountcy, is to provide alternative family placements that are  
28 permanent and secure. In recent years adoption has been increasingly utilised, particularly in the UK  
29 and US, to achieve permanence for children in state care who cannot safely return home to their  
30 birth parents or other birth kin (Tefre, 2015; Kelly and McSherry, 2002). Across the UK 6,124 children  
31 were adopted from care in 2014, representing approximately 7% of all children in state care that  
32 year (DfE, 2015a; The Scottish Government, 2015; The Welsh Government, 2015). Of these children

1 adopted from care, 72 were in Northern Ireland representing 9% of discharges from care here in  
2 2014/15 (DHSSPS, 2015). For many such children, adoption offers the best route to a secure family  
3 upbringing and lifelong relationships (DfE, 2015b), improving their life chances, providing stability,  
4 upholding their UNCRC right to continuity of care, and facilitating recovery from adversity (Selwyn et  
5 al, 2015).

6 The adoption of children in State care who cannot return to their family of birth requires  
7 assessment, care planning and legal intervention by public child welfare agencies who undertake to  
8 place the child permanently with non-kin. This public form of adoption, especially when contested  
9 by birth parents, involves a particularly intrusive role for the State in regulating the breaking and  
10 making of legal family ties. Under the Care Order or Residence Order provisions of the Children  
11 Order, parental responsibility only ever becomes shared not extinguished. In contrast to this, an  
12 Adoption Order effects a total and permanent transfer of legal parenthood from birth to adoptive  
13 parents, who exclusively and irrevocably assume the parental rights and responsibilities relinquished  
14 by, or removed from, the birth parents.

15 Adoption also highlights questions about the extent to which child safety should be prioritised over  
16 family preservation. When children cannot safely live with birth relatives, there is an inherent  
17 tension in the State's duty to protect, but to do so in a way consistent with the right to respect for  
18 family life. However, only a minority of children are adopted from care with the consent of their  
19 birth parents. The majority of public adoptions in Northern Ireland, for example, are contested, and  
20 achieved via Freeing Orders applications under The Adoption (Northern Ireland) Order 1987  
21 (NIGALA, 2015). Dispensing with parental consent to adoption in this way is justified in law on the  
22 basis of safeguarding the child's welfare, but does not sit easily with human rights or the children's  
23 rights principles that are foundational to the Children Order.

24 Particularly contentious in the UK have been recent policy moves toward increasing the rate and  
25 speed of adoptions from care in order to safeguard children from maltreatment, and avoid care  
26 planning drift. This drive has been a response, in part, to critiques that the child welfare system,  
27 skewed by romanticised notions about birth ties (Tefre, 2015), prioritises the interests of parents  
28 over the needs of children, with prolonged efforts at rehabilitation exceeding the timeframes that  
29 are in a child's best interest (Brown and Ward, 2013). However, critics have counter-argued that  
30 policy drives for adoption result in adults' needs being too readily overlooked (Bywaters, 2015). The  
31 polarities in this debate reflect the juxtaposition of parent and child rights at the centre of contested  
32 adoption from care.

33 **Children Order principles and the development of open adoption**

1 The strong explicit policy and legislative emphasis on keeping children with their birth families  
2 means that many children who are eventually adopted will have lived with their birth parents prior  
3 to their admission to care, and, once in foster care, extensive efforts will be made toward  
4 reunification, before a care plan of adoption is agreed. The provisions of the Children Order,  
5 furthermore, recognised children's right under the UNCRC (Article 9) to stay in contact with both  
6 parents, unless this might hurt them, and introduced a presumption of contact for children  
7 throughout their time in care. These frameworks comprise a mandate to ensure that children have  
8 contact with significant birth relatives while they are in care, and are allowed continued connection  
9 with their birth parents following adoption.

10 Because of the high stakes resting on decision-making, contested adoptions require an intensive  
11 process of multi-disciplinary assessment, consultation, and debate, and legal proceedings are  
12 necessarily rigorous and often lengthy. As a result, many children may spend months or years in the  
13 care of temporary foster carers before being adopted. Most adoptions from care are finalised  
14 between the child's first and fifth birthdays (DfE, 2015a; DHSPS, 2015).

15 While much of this delay purposefully explores and exhausts options for family preservation,  
16 protracted care planning processes come under criticism for falling short of upholding the child's  
17 welfare as the paramount concern. Research consistently suggests that the earlier children are  
18 placed in their permanent placement, the more likely that placement is to succeed (Rushton, 2007;  
19 Biehal et al, 2010; Selwyn et al, 2015).

20  
21 Distinctively in Northern Ireland child placement practice has evolved to ameliorate this tension by  
22 approving prospective adopters also as foster carers. In 2014/15, 66% of new adopters in the region  
23 were approved also as foster carers (HSCB, 2015). Referred to locally as "dual approval" this process  
24 has more recently been introduced in England and Wales under the term "foster to adopt". It  
25 enables children to be placed with their prospective adoptive parents on a fostering basis at an  
26 earlier stage, when a plan of adoption has been agreed by the Health and Social Care Trust which is  
27 the public child welfare agency with statutory responsibility for care planning. This practice  
28 maximises opportunities for children's early attachment to their permanent care givers, removing  
29 the necessity of care moves and consequently reducing the potential for attachment disruption.  
30 Simultaneously, and if it is assessed as being in their interests, the children may continue to have  
31 high levels of parental contact which carers are often involved in facilitating (Kelly et al, 2007;  
32 Simmonds, 2013).

1 Therefore, consequent to the principles of partnership and prevention, many children adopted from  
2 care arrive in their adoptive placement with some existing relationships with birth relatives. Contact  
3 after adoption can provide continuity in birth relationships, and facilitating ongoing connection with  
4 birth relatives, in some form, is considered humane and potentially beneficial to the child as long as  
5 this does not undermine the prospect of a stable adoption (Neil et al, 2011). Contact after adoption  
6 may be indirect, via written communication, or direct and involving face-to-face meetings between  
7 the child and any combination of birth relatives, with or without the facilitation of an adoption  
8 agency intermediary.

9 There is some evidence of a strong presumption of contact in Northern Ireland and higher rates of  
10 direct face-to-face contact compared with the rest of the UK. In England and Wales, for example, it is  
11 estimated that a significant minority (Neil et al, 2011), perhaps as few as one in five (Jones, 2016)  
12 children adopted from public care are likely to have direct contact with a birth relative. However, in  
13 Kelly's (2012) survey of 89 adopters in Northern Ireland the majority (89%) of domestic adopters  
14 reported some form of post-adoption contact, with a trend towards higher rates of contact  
15 generally, and direct contact in particular, in more recent adoptions. This trend towards increased  
16 rates of post-adoption contact, with more children having face-to-face meetings with birth relatives,  
17 is reflected in anecdotal accounts of practitioners in this region.

18 Proposed contact arrangements are thoroughly considered during adoption proceedings to ensure  
19 that agreements are in place to facilitate children's ongoing birth connections. There is currently,  
20 however, no formal mechanism for recording the numbers of families having post-adoption contact  
21 or the form these arrangements take, nor is there any statutory reporting of social work involvement  
22 in contact arrangements after adoption. Therefore, it is not clear how many adoptive families in  
23 Northern Ireland have contact with birth relatives, what form this contact takes, how often, and with  
24 which birth relatives. Judicial scrutiny of contact arrangements reveals the somewhat ambiguous  
25 position of adoptive parents who have a right to respect for the family life that is created, in a legal  
26 sense, by the making of an Adoption Order, but who have reported feeling constrained to comply  
27 with contact plans as a non-negotiable condition of adoption (MacDonald, 2016). However, there is  
28 limited information on how adoptive families experience and manage contact arrangements or what  
29 resources they draw on for support if difficulties arise.

### 30 **The complexities of post-adoption contact**

31 While post-adoption contact is often seen as consistent with both the child and birth parent's right  
32 to family life, it brings its own potential difficulties and added complexity to adoptive family life.  
33 From the perspective of child welfare, research evidence would suggest that neither contact nor lack

1 of it necessarily leads to psychosocial difficulties (Quinton and Selwyn, 2006; Jones, 2016). However,  
2 while contact can bring benefits to children, birth parents and adoptive families (Neil et al, 2011) it  
3 can also present a range of difficult issues, cause children to be unsettled and anxious, and prove  
4 stressful for all involved. In their study of 'complex' contact arrangements following adoptions from  
5 care, Neil et al (2011) found that over half of the children were having direct contact with a birth  
6 relative that had previously neglected or abused them. The adoptive parents reported challenges in  
7 these situations that centred on the child's negative reaction to contact, the quality of interactions  
8 during meetings, and managing risks and boundaries. For all involved, contact can involve intense  
9 emotions, described by birth parents as an emotional roller coaster with each contact visit  
10 welcomed but culminating in repeated experiences of loss (McLoughlin, 2013).

11 Many birth parents who lose a child to compulsory adoption struggle with the enduring negative  
12 impact of the adoption (Neil et al, 2011) and the ongoing significant social, psychological or health  
13 difficulties that precipitated it. Many birth parents struggle to accept the decisions of social services  
14 and the Court, and continue to feel a strong sense of injustice years after the adoption, sometimes  
15 failing to grasp the legal permanence of the arrangement (McLoughlin, 2013). Roles and  
16 relationships in the adoptive kinship network can be particularly ambiguous and potentially  
17 conflicted when the adoption is contested. Whilst many birth parents value the opportunity for face-  
18 to-face contact with their child, and appreciate the care provided by their adoptive parents (Neil et  
19 al, 2011; McLoughlin, 2013), some can be reluctant to acknowledge the parental status of adopters  
20 (MacDonald, 2015), or find it difficult to manage the changed dynamics brought about by adoption  
21 (McLoughlin, 2013). Some adopters have recounted engaging in social avoidance to guard the  
22 physical boundary of their family in response to perceived or verbalised risk of aggression by birth  
23 relatives or suggestions that they would attempt to reclaim the child (MacDonald, 2016).

24 Relationships in the adoptive kinship network, particularly following contested adoption, are,  
25 therefore, exceptionally complex. The current vocabulary of kinship is inadequate to describe  
26 relational roles and expectations between birth and adoptive families, (MacDonald, 2015), and in  
27 the absence of a social template to guide interactions (Grotevant, 2000) open adoption requires all  
28 parties to forge new ways of doing family relationships (Jones, 2016). Professionals, and indeed  
29 parents, who are at the centre of this complex field of practice are hungry for information that  
30 would help them determine what contact arrangements might be right for any particular child, and  
31 how relationships might best be supported.

## 32 **Conclusion**

Adoption from care sits at the axis of the intersecting, and sometimes opposing, rights claims of parent and child, with the child's right to safety and permanence held in tension with the importance of preserving birth relationships and a mandate to respect private and family life (Tefre, 2015; MacDonald, 2016). In an effort to resolve this tension, adoption has become increasingly open, to the extent that post-adoption contact now proliferates. The principles of partnership and prevention that are foundational to the Children Order established a policy environment in which adoption practice has been able to evolve to take account of the needs and rights of the various parties. However, birth relative contact continues to generate professional disquiet emphasising the paradoxical nature of installing the child in a permanent new family while retaining the significance of their original family (Sales, 2012), and highlighting the difficulty of upholding the child's right to this dual connection in a way that does not compromise their wellbeing.

Given the significant complexities of contact for all parties, it is questionable whether arrangements do indeed offer children beneficial and enduring relationships with birth relatives. In order for post-adoption contact to be sustainable over time and provide children with meaningful birth connections, there is professional imperative to develop practice that is: sensitive to the child's needs and not cause undue distress; facilitates comfortable interaction between the connected but separate individuals in the adoptive kinship network; empowering and enabling and avoids the imposition of formulaic or restrictive arrangements; that is sensitive to the needs and feelings of all parties (Neil et al, 2011; Siegel and Smith, 2012). This will require more sophisticated ways of scaffolding these pioneering relationships (Grotevant, 2000), and the development of practice models that are sensitive to the workings of kinship and the particular complexities of forging and maintaining a sense of kin connection between adoptive and birth families.

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